Petition

81-1666
No.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

LEON G. GRANT,

Petitioner,

—v.—

WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION, JANE R. WILKINSON, ROBERT J. WILLIAMS, and MARK C. ENDRESEN, as Members of the Commission, MARVIN L. SCHURKE, as Executive Director of the Commission, LOCAL 519 OF THE PUBLIC SAFETY EMPLOYEE UNION, RANDALL REVELLE, as King County Executive, BERNARD G. WINCKOSKI, as Director of the King County Department of Public Safety, and ALBERT G. ROSS, as King County Personnel Director,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

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Question Presented

The state of Washington exempts public employees with religious objections from the requirement of union-dues payment if they are members of churches that object to union support. Does the state violate the Religion Clauses of the First Amendment or the Equal Protection Clause of the Fourteenth Amendment by denying an exemption to a religious objector on the sole ground that he is not a church member?

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Opinions Below

The majority and dissenting opinions in the Supreme Court of Washington are reported at 96 Wn.2d 454 and 635 P.2d 1071. They are reprinted in the Appendix at 1a.

Jurisdiction

The "validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution" of the United States. Jurisdiction to review the judgment of the Supreme Court of Washington by writ of certiorari is, therefore, conferred on this Court by 28 U.S.C. §1257(3) (1976).

The judgment of the Supreme Court of Washington was entered on November 5, 1981 (App. 1a), and an order denying petitioner's motion for reconsideration was entered on December 8, 1981 (App. 1b).

Constitutional Provisions

Amendment I, Religion Clauses:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .

Amendment XIV, Equal Protection Clause:

> No State shall . . . deny to any person within its jurisdiction the equal protection of laws.

Statute

Wash. Rev. Code § 41.56.122 (1981):

> A collective bargaining agreement may:
>
> (1) Contain union security provisions: Provided, That nothing in this section shall authorize a closed shop provision: Provided further, That agreements involving union security provisions must safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member. Such public employee shall pay an amount of money equivalent to regular union dues and initiation fee to a nonreligious charity or to another charitable organization mutually agreed upon by the public employee affected and the bargaining represen-

> tative to which such public employee would otherwise pay the dues and initiation fee. The public employee shall furnish written proof that such payment has been made. If the public employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. When there is a conflict between any collective bargaining agreement reached by a public employer and a bargaining representative on a union security provision and any charter, ordinance, rule, or regulation adopted by the public employer or its agents, including but not limited to, a civil service commission, the terms of the collective bargaining agreement shall prevail.
>
> . . . .

Statement of the Case[1/]

Leon G. Grant is a police sergeant employed by the King County, Washington, Department of Public Safety. As such he is included in a bargaining unit repre-

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1. The facts related here are recited in the opinions in the Supreme Court of Washington, App. 1a, unless another citation is indicated.

sented by a union under a collective bargaining agreement between the union and the county. The agreement requires that all employees in the bargaining unit give financial support to the union except "employees with a bona fide religious objection to union membership and/or association based on the bona fide tenets or teachings of a church or religious body of which such employee is a member . . . ."

The language of the agreement is based on Wash. Rev. Code § 41.56.122(1) which authorizes union-support provisions in public employment contracts, but requires that contracts with such provisions accommodate "the right of nonassociation of public employees based on bona fide tenets or teachings of a church or religious body of which such public employee is a member." Exempted employees must give to a charity what they would otherwise pay to a union.

Petitioner requested an exemption from the union-support requirement, and submitted affidavits attesting to the religious nature of his objections to union support. The affidavits were not controverted; they show that petitioner is a Christian, and that his objections to union support derive from his understanding of Christianity.[2/] They also show that he is not a member of any church. (App. 11e-13e)

The Executive Director of Washington's Public Employment Relations Commission ruled on petitioner's request, applying the law to the undisputed facts in what amounted to a summary judgment. He denied the request "because the statute does not

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2. Petitioner's objections were characterized as "religious" by the Supreme Court of Washington. (App. 8a-9a)

contemplate granting the exemption to a conscientious objector who is not a member of an organized religion." (App. 11e-13e)

The Executive Director's decision was affirmed by a divided Commission, and the Commission's decision was affirmed by a judge of the King County Superior Court. The Executive Director, the Commission and the superior court all considered the same record with its uncontroverted statements attesting to petitioner's sincere religious objection to union support.

The Supreme Court of Washington affirmed the decision of the superior court by a vote of five to four. The majority began by construing the exemption statute to apply only to members of churches that oppose union support. It then upheld the statute against petitioner's federal constitutional attack, basing its decision on Abood v. Detroit Bd. of

Educ., 431 U.S. 209 (1977).[3]

The dissent focused on a problem not addressed by the majority, and not faced by this Court in Abood:

> The problem facing this court is not whether union security clauses may be validly enacted . . . as in Abood . . . , but rather whether the legislature may grant a statutory exemption based on religious beliefs, and distinguish between the religious beliefs of those who are affiliated with religious organizations and those who are not. The majority opinion wholly fails to recognize this problem.

96 Wn.2d at 463, 635 P.2d at 1076, App. at 10. The four dissenting justices saw the requirement that an individual's religious objection be validated by an official church policy as foreclosed by this Court's decision in Thomas v. Review Bd. of Indiana

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3. In Abood, this Court held that union security clauses do not violate the First Amendment guarantee of freedom of association.

Employment Security Div., 450 U.S. 707 (1981).

Petitioner's federal constitutional claims were raised in briefs considered at each administrative and judicial stage of the case. The order accepting the case for review by the Supreme Court of Washington identified the following issue for determination: "Do a public employee's personal religious beliefs, which are not related to membership in any church or religious body, qualify for safeguarding from the effect of union security agreements under the second proviso in [Wash. Rev. Code §] 41.56.122(1), and if not is the proviso unconstitutional under the First and Fourteenth Amendments?" (App. 2c)

Why the Writ Should Be Granted

The decision of the Supreme Court of Washington sanctions the use of an exemption based on religious affiliation rather than religious belief: the exemption is not available to all sincere religious objectors to union support; it is available only to those whose objections are validated by a church to which they belong.

This Court should review the Washington court's decision because: (1) it presents an important question of federal constitutional law affecting religious freedom; (2) the question has not been directly answered by this Court; (3) it has been answered by the Washington court in a way that conflicts with decisions of this Court, including Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S. 707 (1981), and United States v. Seeger, 380 U.S. 163 (1965); and (4) the

decision of the Washington court conflicts with decisions of other appellate courts in analogous cases such as Tooley v. Martin-Marietta Corp., 648 F.2d 1239 (9th Cir.), cert. denied, ___ U.S. ___, ___ L. Ed. 2d ___, 102 S. Ct. 671 (1981), Nottelson v. Smith Steel Workers D.A.L.U. 19806, 643 F.2d 445 (7th Cir.), cert. denied, ___ U.S. ___, 70 L. Ed. 2d 488, 102 S. Ct. 587 (1981), and Wondzell v. Alaska Wood Products, Inc., 601 P.2d 584 (Alaska 1979), appeal dismissed, 444 U.S. 1040 (1980). See Sup. Ct. R. 17.1.

Like the Washington State Legislature, the Congress and the legislatures of several states have adopted union-support exemption statutes applicable only to church members. Section 19 of the National Labor Relations Act, 29 U.S.C. § 169, amended in 1980 to reach all employment covered by the NLRA, applies only to one

"who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations . . . ." There are similar restrictions in several state exemption statutes.[4/]

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4. E.g., Alaska Stat. § 23.40.225 (1981)("employees having bona fide religious convictions based on tenets or teachings of a church or religious body of which an employee is a member"); Mont. Code Ann. § 39.31.204(1) (1981)("employee who is a member of a bona fide religious sect or division thereof, the established and traditional tenets or teachings of which oppose a requirement that a member of such sect or division join or financially support any labor organization"); Or. Rev. Stat. § 243.666 (1979)("based on bona fide tenets or teachings of a church or religious body of which such employee is a member"). The Oregon Court of Appeals noted the federal constitutional issues raised by the limited scope of its exemption statute in Gorham v. Roseburg Ed. Ass'n, 39 Or. App. 231, 592 P.2d 228 (1979), but decided that the issues were not presented on the facts of that case.

The emergence of religious-exemption statutes in the union-support context raises constitutional questions previously brought to this Court by conscientious objectors to the military draft. In the draft cases, some of these questions were avoided by broad constructions of the federal statutes involved. The constitutional questions raised by an exemption limited to church members are unavoidable in this case in light of the state court's authoritative construction of the Washington statute. They are important questions that this Court should answer.

Section 1 below will show how the decision of the Washington court conflicts with the teachings of this Court under the Establishment Clause. Section 2 will show how it conflicts with the teachings of this Court under the Free Exercise and Equal Protection Clauses.

1. Washington's Statute Violates the Establishment Clause

"The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can . . . prefer one religion over another." Everson v. Bd. of Educ., 330 U.S. 1, 15 (1947). See also Walz v. Tax Commission of the City of New York, 397 U.S. 664 (1970);[5] United States v. Ballard, 322 U.S. 78 (1944).[6] By exempting religious objectors who belong to certain churches, while refusing to exempt religious objectors who do not, the state of Washington has preferred one religion

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5. Government may exercise "benevolent neutrality toward . . . religious exercise so long as none [is] favored over others . . . ." Id. at 666-67.

6. "The First Amendment does not select any one group or any one type of religion for preferred treatment." Id. at 86-87.

over another. It has preferred the Seventh Day Adventist religion,[7] for example, over the religions of objectors who are not affiliated with any church, and of those who are church members but who, like the petitioner in Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S. 707 (1981), hold views not shared by all members of their church. That preference violates the Establishment Clause.

This Court has not previously ruled directly on whether a religious exemption limited to church members violates the Establishment Clause. The question has, however, been discussed in cases construing the statutory conscientious-objector exemption from the military draft, includ-

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7. "[U]nder the tenets of their faith, [Seventh Day Adventists] are prohibited from becoming members in or paying a service fee to a union." Tooley v. Martin-Marietta Corp., 648 F.2d 1239, 1241 (9th. Cir. 1981).

ing United States v. Seeger, 380 U.S. 163 (1965), and Welsh v. United States, 398 U.S. 333 (1970). Both Seeger and Welsh involved criminal prosecutions of individuals who refused to serve in the military and had been denied exemptions.

The Court was confronted in Seeger by claimants who were not affiliated with any church and who professed non-theistic beliefs. They had been denied exemptions under a statute which made a "belief in relation to a Supreme Being" prerequisite to exemption. The Court construed the phrase "belief in relation to a Supreme Being" broadly to include any belief which "occup[ies] the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption." 380 U.S. at 184. By that construction, the Court avoided the constitutional questions a narrower construction

would have raised. Those questions were articulated in the concurring opinion of Justice Douglas. Id. at 188.

An earlier version of the conscientious-objector exemption statute, amended before Seeger arose, had a limitation similar to the limitation in the Washington statute. To qualify for exemption, one had to be affiliated with a "well-recognized religious sect or organization . . . whose existing creed or principles [forbade] its members to participate in war in any form . . . ." Draft Act of 1917, 40 Stat. 76, 78. The Court in Seeger noted that, in eliminating the church-membership requirement, Congress had "recognized that one might be religious without belonging to an organized church . . . ." Id. at 172.[8/]

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8. In its "Guidelines on Discrimination Because of Religion," the Equal Em-

By the time the Court reviewed Welsh v. United States, 398 U.S. 333 (1970), the exemption statute had been changed again. The reference to "a Supreme Being" had been eliminated, but a requirement that a claimant's objection be based on "religious training and belief" was retained. Welsh had characterized his own beliefs as non-religious.

Four Justices voted in Welsh to extend the exemption to "all those whose consciences, spurred by deeply held moral, ethical, or religious beliefs, would give them no rest or peace if they allowed themselves to become a part of an instrument of war." Id. at 344 (emphasis added).

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ployment Opportunity Commission expresses the same recognition in a regulation which cites United States v. Seeger: "The fact that no religious group espouses such beliefs . . . will not determine whether the belief is a religious belief . . . ." 29 C.F.R. § 1605.1.

Justice Harlan rejected the plurality's broad construction of the statute, but concurred in the reversal of Welsh's conviction on the ground that it was compelled by the Establishment Clause. Id. at 356. The intent of Congress, as he saw it, had been to exempt only objectors with theistic beliefs. In his view, the resulting preference of theistic beliefs over both non-theistic religious beliefs and non-religious ethical beliefs violated the Establishment Clause.

Three Justices dissented on the grounds that exemptions based on non-religious beliefs were not contemplated by Congress, and that affording exemptions only to religious objectors did not violate the Establishment Clause. Id. at 367-74 (opinion of White, J.).

All of the opinions in Welsh appear to assume that an exemption available to

some religious objectors but not to all religious objectors would violate the Establishment Clause.[9/] It was not to Welsh's lack of church affiliation that the dissenters objected, but rather to the fact that his beliefs were not religious at all.

The difficult questions about the definition of "religion" that faced the Court in Seeger and Welsh are not present in this case. The court below has characterized petitioner's objections as "religious" (App. 8a-9a), and neither the religious nature of his beliefs, nor the sincerity with which they are held, has been

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9. That assumption was not challenged in Gillette v. United States, 401 U.S. 437 (1971). There the Court rejected the argument that a religious objector to some, but not all, war was entitled to exemption. The Court's opinion emphasized that "no particular sectarian affiliation or theological position is required" for exemption—just objection to all war. Id. at 450-51.

disputed. Petitioner is a Christian, and his objections to union support derive from his understanding of Christianity. (App. 12e) It is only his lack of church affiliation that the state of Washington disfavors.

The assumption that individuals with sincere religious objections to a governmental requirement are entitled to equal treatment regardless of church affiliation is implicit in the military conscientious-objector decisions. This case demonstrates a need to make that assumption explicit.

2. Washington's Statute Violates the Free Exercise and Equal Protection Clauses

The Free Exercise Clause of the First Amendment requires reasonable accommodation by a state when state regulation and religious exercise conflict. Thomas v. Review Bd. of Indiana Employment Security Div.,

450 U.S. 707 (1981); Sherbert v. Verner, 374 U.S. 398 (1963). In particular, if as a condition of eligibility for a state benefit a state requires conduct that would violate an individual's religion, then the individual must be exempted from the requirement unless it is "the least restrictive means of achieving some compelling state interest." Thomas, 450 U.S. at 718.

The public benefits at issue in Sherbert and Thomas were unemployment compensation. Sherbert's religious convictions prevented her from working on Saturday; Thomas's prevented him from building instruments of war. Sherbert was fired for her refusal to work on Saturday; Thomas quit when his employer would not reassign him to work unrelated to weaponry. Both were "put to a choice between fidelity to religious belief or cessation of work," Thomas, 450 U.S. at 717, and both chose the former.

Both were denied unemployment compensation benefits by state agencies.

In both cases, this Court examined the interests of the states in requiring availability for work that would violate the religious convictions of the individuals affected; in both cases, it held those interests insufficient to justify burdening the free exercise of religion by withholding benefits from those who remained faithful to their religious convictions.

The public benefit at issue in this case is public employment. Like Sherbert and Thomas, petitioner has been "put to a choice between fidelity to religious belief or cessation of work." He must choose between fidelity to his religious belief, which dictates against union support, and his career as a police officer. (The choice has been deferred during this litigation. By agreement of the parties, petitioner

has been permitted to hold an amount equivalent to the union assessment in a bank account in lieu of payment.)

The Washington court distinguished Thomas on the ground that petitioner there was a church member. While this Court held in Thomas that "the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect," 450 U.S. at 714-15, it left open, according to the Washington court, whether the guarantee extends to religious beliefs held by individuals who are not members of any sect.[10/] The Washington court ruled that petitioner's religious

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10. "The question of whether membership in a religious body is required along with whatever personal religious beliefs a person might have or if personal religious beliefs are enough is not determined by Thomas. We will have to await further word from the United States Supreme Court on that matter." 96 Wn.2d at 459, 635 P.2d at 1074, App. at 6a.

beliefs did not require accommodation, citing Abood v. Detroit Bd. of Educ., 431 U.S. 209 (1977).

Abood held only that freedom of association does not prohibit the use of union-support provisions. This Court has never decided whether the Free Exercise Clause requires accommodation of a public employee's religious objections to union support.[11/] That general ques-

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11. Answering an analogous question under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (1976), lower federal courts have held that unions representing private employees may be required to exempt religious objectors from union-support requirements. E.g., Tooley v. Martin-Marietta Corp., 648 F.2d 1239 (9th Cir.), cert. denied, ___ U.S. ___, ___ L. Ed. 2d ___, 102 S. Ct. 671 (1981); Nottelson v. Smith Steel Workers D.A.L.U. 19806, 643 F.2d 445 (7th Cir.), cert. denied, ___ U.S. ___, 70 L. Ed. 2d 488, 102 S. Ct. 587 (1981). A similar result was reached under a parallel state law in Wondzell v. Alaska Wood Products, Inc., 601 P.2d 584 (Alaska 1979), appeal dismissed, 444 U.S. 1040 (1980). Justices Brennan and Marshall voted to grant certiorari in Nottleson; Justices White and Rehnquist voted to note probable jurisdiction in Wondzell.

tion need not be answered here, since Washington has chosen to create a religious exemption.

By legislating a religious exemption, the state has conceded that no compelling interes requires it to condition public employment on union support by members of churches that endorse objection to such support. Consequently, the free exercise question presented here is a narrow one: does any compelling interest require the state to deny to unaffiliated religious objectors what it grants to church members?

The same question arises under the Equal Protection Clause of the Fourteenth Amendment. The free exercise of religion is a fundamental right; a statutory classification impinging on that right can be upheld only if justified by a compelling governmental interest. See Johnson v. Robison, 415 U.S. 361, 375 n. 14 (1974);

cf. Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974). As Justice Harlan observed in Walz v. Tax Commission of the City of New York, 397 U.S. 664 (1970)(concurring opinion), this Court "must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders." Id. at 696.

No compelling interest in denying petitioner's request for exemption has been identified by the state. The majority opinion in the court below referred to the state's interest in promoting orderly labor relations as justification for the use of union-support provisions, but the use of such provisions in general is not at issue here. In focusing on the state's interest in promoting orderly labor relations, the majority committed the error against which Professor Tribe warned as follows:

> [i]n applying the least restrictive alternative-compelling interest requirement, it is crucial to avoid the error of equating the state's interest in denying a religious exemption with the state's usually much greater interest in maintaining the underlying rule or program for unexceptional cases. Only the first interest—that in denying an exemption—is constitutionally relevant when an exemption is sought.

Tribe, American Constitutional Law, at 885 (1978); see Wisconsin v. Yoder, 406 U.S. 205, 228-29 (1972).

The only state interest in denying religious exemptions to non-church members mentioned by the Washington court is an interest in not having to "evaluat[e] individual beliefs and opinions on a case by case basis" to determine whether they are religious. 96 Wn.2d at 458, 635 P.2d at 1073, App. at 5a. The state does not contend that its interest in promoting orderly labor relations compels it to

deny public employment to all who refuse on religious grounds to support a union. On the contrary, it exempts members of certain churches from its union-support requirement. Denying exemptions to religious objectors who are not members of such churches is not necessary to the promotion of the state's interest in orderly labor relations; it is simply more convenient for the state to avoid individualized determinations of exemption claims.

If there is to be any accommodation of the free exercise of religion, then some determinations of what is religious exercise are unavoidable. The state has not avoided making such determinations; it has only attempted to simplify them by applying a highly restrictive standard that exempts some religious objectors and not others. It has an alternative that is less restrictive of the free exercise

of religion: an exemption available to all sincere religious objectors.

It may be more convenient for the state to curtail individualized determinations of exemption claims. But, if administrative convenience were enough to justify burdening the free exercise of religion, then accommodation would never be required. It is not enough. As this Court held in Wisconsin v. Yoder, "only those interests of the highest order can overbalance legitimate claims to the free exercise of religion." 406 U.S. at 215.

The holding of Wisconsin v. Yoder was reaffirmed this term in United States v. Lee, 50 U.S.L.W. 4201 (U.S. Feb. 23, 1982)(No. 80-767), although the free-exercise claim asserted there was rejected by the Court. The respondent in Lee was seeking an exemption from certain federal taxes; the Court held that his claim was

overbalanced by an interest of the highest order: an interest in maintaining a sound tax system. The Court reasoned that "[t]he tax system could not function if denominations were allowed to challenge [it] because payments were spent in a manner that violates their religious belief." Id. at 4204 (emphasis added).

Washington's interest in promoting union support by public employees is weaker than the interest of the United States in collecting taxes. Recognizing that a system of orderly labor relations can function without excluding religious objectors to union support from public employment, the state has created a religious exemption from its union-support requirement. The unnecessarily restrictive scope of its exemption violates the Free Exercise Clause.

Conclusion

A writ of certiorari should issue.

Respectfully submitted,

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March 1982

Appendix

DOLLIVER, HICKS, WILLIAMS, and DORE, JJ., concur.

[No. 47441-9. En Banc. November 5, 1981.]

LEON G. GRANT, *Appellant*, v. JOHN SPELLMAN, ET AL, *Respondents*.

[1] Labor Relations — Public Employment — Union Dues — Exemption — Membership in Religious Organization. To come within the union dues payment exemption of RCW 41.56-.122(1) based upon religious beliefs, a public employee must belong to a church or religious body.

[2] Labor Relations — Public Employment — Collective Bargaining — Interest of State. The State has a compelling interest in maintaining the orderly system of labor relations in the public sector established by RCW 41.56.

[3] Labor Relations — Bargaining Unit — Mandatory Membership — Freedom of Religion. A union security provision of a collective bargaining agreement which requires nonmember employees to pay to the union a share of the costs incurred by the union in representing the bargaining unit does not violate the rights of employees under U.S. Const. amend. 1 to the free exercise of religion.

WILLIAMS, STAFFORD, UTTER, and HICKS, JJ., dissent by separate opinion.

Nature of Action: A public employee sought judicial review of the Public Employment Relations Commission's refusal to exempt him from paying a fee to a union. The union security provision in the collective bargaining agreement allowed employees to avoid paying the fee if their objections were based upon bona fide religious tenets or teachings of a religious body to which they belonged.

Superior Court: The Superior Court for King County, No. [illegible] George H. Revelle, J., on February 6, 1980, upheld the decision of the Commission.

Supreme Court: Holding that the union security provi-

sion did not violate the employee's First Amendment right to the free exercise of his religion, the court *affirms* the judgment.

George Cleve Haynes, for appellant.

Norm Maleng, Prosecuting Attorney, and *Richard W. Elliott, Deputy*, for respondents Spellman, et al.

Hafer, Cassidy & Price and *John Burns*, for respondent Public Safety Employees Union, Local 519.

Kenneth O. Eikenberry, Attorney General, and *Richard A. Heath, Assistant*, for respondents Public Employment Relations Commission, et al.

Judith A. Lonnquist on behalf of Washington Education Association, amicus curiae for respondents.

DOLLIVER, J.—Plaintiff Leon G. Grant seeks review of a decision of the King County Superior Court sustaining an administrative decision by the Public Employment Relations Commission in favor of defendants.

Plaintiff is employed as a sergeant in the King County Department of Public Safety. King County, a "public employer" under RCW 41.56.030, and Public Safety Employees Local 519 (Local 519) are parties to a collective bargaining agreement which sets the terms and conditions of employment for certain employees of the Public Safety Department. Plaintiff is included in the bargaining unit represented by Local 519.

The parties' contract includes a union security clause, which requires that members of the bargaining unit affected by the agreement tender periodic payments to the union as a condition of continued employment. The clause does not require that anyone become a member of Local 519. There are no requirements which might flow from membership, nor must a member of the bargaining unit affirm or adopt union policies. All that is required is that an employee pay a fair share of the costs incurred by the union in representing the bargaining unit, in this instance $11.20

per month. Local 519 has a dues rebate procedure to ensure that nonmembers are not required to support activities unrelated to the costs of collective bargaining.

A portion of the union security clause provides that

> employees with a bona fide religious objection to union membership and/or association based on the bona fide tenents or teachings of a church or religious body of which such employee is a member shall not be required to tender those dues or initiation fees to the Union . . .

The clause further provides that employees with such religious objections may pay to a charity an amount equal to the required assessment in lieu of payment to the union.

The quoted contract provision is virtually identical to language in the Public Employees' Collective Bargaining Act, RCW 41.56, which provides for union security agreements, but permits exemptions for persons who object to association on religious grounds. The statute reads:

> A collective bargaining agreement may:
> (1) Contain union security provisions: *Provided*, That nothing in this section shall authorize a closed shop provision: *Provided further*, That *agreements* involving union security provisions *must safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member.* Such public employee shall pay an amount of money equivalent to regular union dues and initiation fee to a nonreligious charity or to another charitable organization mutually agreed upon by the public employee affected and the bargaining representative to which such public employee would otherwise pay the dues and initiation fee. . . .

(Italics ours.) RCW 41.56.122(1).

Plaintiff asked Local 519 to rule that he came within the exemption to the union security clause. Local 519 rejected the request on grounds that plaintiff's objection to tendering money to the union was not based on bona fide religious tenets or teachings of a church or religious body. Plaintiff then petitioned the Public Employment Relations Commission (PERC) to direct Local 519 to grant his request. In

denying the petition, the executive director of PERC stated that plaintiff's "objections are based on personal beliefs" and were thus outside the scope of the exemption at issue.

On appeal, the full commission sustained the executive director in a 2-to-1 vote. PERC held the exemption was available only to those who based their objection on the tenets or teachings of a church or religious body of which the public employee was a member. It found plaintiff did not ground his objections in such tenets or teachings, as required by RCW 41.56.122(1). PERC concluded that plaintiff's "claim would broaden the exemption in a manner which would tend to destroy the basic intent of the legislature." PERC Decision on Review, May 3, 1979, at 3.

In his affidavit, which is part of the record in this action brought under the administrative procedure act, RCW 34.04, plaintiff testified that he is a religious person, but belongs to no organized religion. He was baptized a Christian but resigned from membership in a Methodist Church. He states his personal religious beliefs in considerable detail, and claims membership in the union would be contrary to those beliefs. The strength and importance of plaintiff's religious beliefs are attested to in several affidavits from other persons.

On appeal to superior court, plaintiff conceded that his objection to tendering money to Local 519 is based on personal religious beliefs. He argued, however, that those views were intensely held and took the place of a traditional religion. He argued that the use of the term "bona fide religious tenets or teachings of a church or religious body of which such public employee is a member" in RCW 41.56-.122 must be read disjunctively. He asserted that his beliefs concerning union support are "religious tenets" and thereby bring him within the exemption provided by statute. Defendant Local 519, joined by defendants King County and PERC, argued that the PERC ruling had been correct for the reasons stated therein, and contended further that plaintiff's interpretation of the law would violate the intention of the legislature, which permitted union security

clauses as an important element of stable labor relations in the public sector.

The Superior Court concluded that the clear and unambiguous language of the statute meant that purely personal beliefs were outside the term "tenet" as used in RCW 41.56.122 and that only those who held beliefs in "bona fide religious tenets or teachings of a church or religious body" came under the exemption created by the statute. Moreover, application of plaintiff's view would create an "uncontrollable exemption" to union security clauses, thereby impairing the orderly labor relations that RCW 41.56.122 was intended to foster. Finally, the trial court concluded PERC and ultimately the courts would be placed in the "impossible position of evaluating individual beliefs and opinions on a case by case basis."

This court accepted certification of plaintiff's appeal.

[1] At the outset we note agreement with the trial court and PERC that, since plaintiff does not belong to a church or religious body, by its terms RCW 41.56.122(1) does not apply to plaintiff.

This is not the first time plaintiff has taken his views relative to union security clauses to court. Plaintiff brought an earlier lawsuit, King County cause No. 832804, in an attempt to invalidate the union's security clause on the grounds of First Amendment freedom of association. Summary judgment was granted to the union and the county and no appeal was taken. Subsequently the present action was commenced.

In arguing that his personal religious beliefs are sufficient, plaintiff relies on *Thomas v. Review Bd.*, ___ U.S. ___, 67 L. Ed. 2d 624, 101 S. Ct. 1425 (1981). In *Thomas*, the plaintiff was a member of Jehovah's Witnesses. He objected on religious grounds to fabricating tank turrets and was terminated by his employer. Thomas' application for unemployment compensation was denied by the Indiana Supreme Court but granted by the United States Supreme Court. In *Thomas*, it is pointed out that others in the Jehovah's Witness membership had no scruples about

working on tank turrets and found such work "scripturally" acceptable. The court found Thomas had terminated his employment for religious reasons and that:

> [T]he guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect. Particularly in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation.

Thomas, 101 S. Ct. 1425 at 1431. The question of whether membership in a religious body is required along with whatever personal religious beliefs a person might have or if personal religious beliefs are enough is not determined by *Thomas*. We will have to await further word from the United States Supreme Court on that matter.

We need not wait a clarification of *Thomas* to decide this case, however, as there are other grounds for making the decision. Under our determination of the case, it is immaterial as to whether plaintiff is a member of an organized religion or asserts personal religious beliefs.

We believe this case comes squarely within the rule announced by the United States Supreme Court in *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 52 L. Ed. 2d 261, 97 S. Ct. 1782 (1977). In *Abood*, the court held that union security provisions in public sector employment do not violate the right of freedom of association under the First Amendment so long as membership in the union is not required and the fee being paid to the union is nothing more than payment for services rendered.

> The designation of a union as exclusive representative carries with it great responsibilities. The tasks of negotiating and administering a collective-bargaining agreement and representing the interests of employees in settling disputes and processing grievances are continuing and difficult ones. They often entail expenditure of much time and money. See *Street*, [*International Ass'n of Machinists v. Street*, 367 U.S. 740, 6 L. Ed. 2d 1141, 81 S. Ct. 1784 (1961)]. The services of lawyers, expert negotiators, economists, and a research staff, as well as

general administrative personnel, may be required. Moreover, in carrying out these duties, the union is obliged "fairly and equitably to represent all employees . . ., union and nonunion," within the relevant unit. *Id.*, at 761. A union-shop arrangement has been thought to distribute fairly the cost of these activities among those who benefit, and it counteracts the incentive that employees might otherwise have to become "free riders"—to refuse to contribute to the union while obtaining benefits of union representation that necessarily accrue to all employees. *Ibid.*; see *Oil Workers* v. *Mobil Oil Corp.*, 426 U. S. 407, 415–416 [48 L. Ed. 2d 736, 96 S. Ct. 2140 (1976)]; *NLRB* v. *General Motors*, 373 U. S. 734, 740–741 [10 L. Ed. 2d 670, 83 S. Ct. 1453 (1963)].

To compel employees financially to support their collective-bargaining representative has an impact upon their First Amendment interests. An employee may very well have ideological objections to a wide variety of activities undertaken by the union in its role as exclusive representative. *His moral or religious views about the desirability of abortion may not square with the union's policy in negotiating a medical benefits plan.* One individual might disagree with a union policy of negotiating limits on the right to strike, believing that to be the road to serfdom for the working class, while another might have economic or political objections to unionism itself. An employee might object to the union's wage policy because it violates guidelines designed to limit inflation, or might object to the union's seeking a clause in the collective-bargaining agreement proscribing racial discrimination. The examples could be multiplied. *To be required to help finance the union as a collective-bargaining agent might well be thought, therefore, to interfere in some way with an employee's freedom to associate for the advancement of ideas, or to refrain from doing so, as he sees fit. But the judgment clearly made in Hanson* [*Railway Employees' Dep't v. Hanson*, 351 U.S. 225, 100 L. Ed. 1112, 76 S. Ct. 714 (1955)] *and Street is that such interference as exists is constitutionally justified by the legislative assessment of the important contribution of the union shop to the system of labor relations established by Congress.* "The furtherance of the common cause leaves some leeway for the leadership of the group. As long as they act to promote

> the cause which justified bringing the group together, the individual cannot withdraw his financial support merely because he disagrees with the group's strategy. If that were allowed, we would be reversing the *Hanson* case, *sub silentio*."

(Italics ours.) *Abood*, at 221–23.

[2, 3] Except that a First Amendment free speech right of association rather than a First Amendment free exercise of religion is involved, the situation in *Abood* is identical to the case before us. We believe the analysis and result in *Abood* applies equally to both religion and speech.

In *Association of Capitol Powerhouse Eng'rs v. State*, 89 Wn.2d 177, 570 P.2d 1042 (1977), we upheld similar union security clauses applicable to state employees (RCW 41.06-.150(11)) against a First Amendment freedom of association challenge. There we cited with approval the statement in *Abood* referring to the "legislative assessment of the important contribution of the union shop to the system of labor relations established by Congress." *Association of Capitol Powerhouse Eng'rs v. State*, *supra* at 188.

RCW 41.56.010, which regulates public employee collective bargaining, states as a declaration of purpose:

> The intent and purpose of this chapter is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers.

This is a clear legislative statement as to the importance of orderly labor relations between public employers and employees.

The maintenance of the carefully developed statutory system of labor relations in the public sector is a matter of compelling state interest. This was found to be so with regard to state employees in *Powerhouse Engineers*, and we find it to be so for those public employees covered by RCW 41.56. No greater "burden" is placed upon the religious

beliefs of plaintiff than was placed on the associational rights of the litigants in *Abood* and *Powerhouse Engineers.* Plaintiff must abide by the union security clause.

The trial court is affirmed.

BRACHTENBACH, C.J., and ROSELLINI, DORE, and DIMMICK, JJ., concur.

WILLIAMS, J. (dissenting)—Assuming the majority is correct in its reading of RCW 41.56.122, *i.e.*, that the statute by its terms does not apply to one who holds religious beliefs which are not part of the teachings of a church or religious body, the majority opinion ignores some fundamental problems on its way to dismissing rather cavalierly plaintiff's claim. Accordingly, for the reasons discussed below, I dissent.

As the majority correctly notes, in *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 52 L. Ed. 2d 261, 97 S. Ct. 1782 (1977), the United States Supreme Court upheld union security provisions in collective bargaining agreements in public sector employment. The court concluded that such provisions do not violate the right of freedom of association under the first amendment to the United States Constitution, so long as membership in the union is not required and so long as the fee paid to the union is limited to payment for services rendered in the collective negotiations process. The court went on to discuss the policy reasons underlying the legislative determination to allow union security clauses, and these reasons are set out in detail on pages 459–60 of the majority opinion. Moreover, I agree that our decision in *Association of Capitol Powerhouse Eng'rs v. State*, 89 Wn.2d 177, 570 P.2d 1042 (1977), clearly upholds in general terms the agency shop provisions of the State Civil Service law, basing its analysis on the Supreme Court's decision in *Abood.*

My basic disagreement is with the majority's assertion that this case is "squarely within the rule" of *Abood.* Majority opinion, at 459. The majority neglects to note a

compelling difference between this case and the facts which faced both the Supreme Court in *Abood* and this court in *Powerhouse Engineers*: namely, the legislatively enacted *statutory exemption* from the agency shop provisions contained in RCW 41.56.122. That statute reads in relevant part:

> A collective bargaining agreement may:
> (1) Contain union security provisions: *Provided*, That nothing in this section shall authorize a closed shop provision: *Provided further*, That *agreements* involving union security provisions *must safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member.* Such public employee shall pay an amount of money equivalent to regular union dues and initiation fee to a nonreligious charity or to another charitable organization mutually agreed upon by the public employee affected and the bargaining representative to which such public employee would otherwise pay the dues and initiation fee. . . .

(Italics mine.) RCW 41.56.122(1).

The problem facing this court is not whether union security clauses may be validly enacted pursuant to a legislative authority, as in *Abood* and *Powerhouse Engineers*, but rather whether the legislature may grant a statutory exemption based on religious beliefs, and distinguish between the religious beliefs of those who are affiliated with religious organizations and those who are not. The majority opinion wholly fails to recognize this problem.

The clause at issue in RCW 41.56.122(1) appears to be our legislature's response to the requirement articulated in some federal cases that an employer must make reasonable accommodation to the religious beliefs of employees. *Yott v. North Am. Rockwell Corp.*, 501 F.2d 398, 403 (9th Cir. 1974); *Anderson v. General Dynamics Convair Aerospace Div.*, 589 F.2d 397, 400 (9th Cir. 1978); 42 U.S.C. § 2000e–2(a)(1) (1977); 42 U.S.C. § 2000e(j) (1977). In previous cases brought under the free exercise clause of the First Amend-

ment, courts have drawn a line in favor of employees when employment practices affect the actual abilities of employees to observe their religions. For example, the Supreme Court has refused to sanction a state's denial of unemployment compensation to Seventh-Day Adventists who refused all Saturday employment. The court reasoned that requiring such persons to accept Saturday employment as a condition of receiving state benefits interfered directly with the exercise of a traditional and long established teaching of the church. *Sherbert v. Verner*, 374 U.S. 398, 10 L. Ed. 2d 965, 83 S. Ct. 1790 (1963).

The question in more recent federal cases in the labor relations area has often been either whether the employer has made a reasonable accommodation to religious beliefs, or whether whatever First Amendment interests are present must give way to superior interests of the employer, the union, and, in the area of public employment, the state. *See, e.g., Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 77, 53 L. Ed. 2d 113, 97 S. Ct. 2264 (1977). In upholding the discharge of an employee who, like plaintiff herein, asserted a right of nonassociation on religious grounds, one court has explained:

> The First Amendment commands us to be vigilant in protecting the free exercise of religion, but religious conscience cannot be a superordinating factor in every situation. The hand of government is not to be stayed where a compelling governmental interest outweighs the infringement upon First Amendment rights. The Supreme Court has repeatedly taught us that the First Amendment's protection of religious conscience is not absolute *when a religious opinion is translated into an act or a refusal to act.*

(Italics mine.) *Gray v. Gulf, Mobile & O. R.R.*, 429 F.2d 1064, 1072 (5th Cir. 1970). *See also Yott v. North Am. Rockwell Corp.*, 602 F.2d 904 (9th Cir. 1979); *Linscott v. Millers Falls Co.*, 440 F.2d 14, 17 (1st Cir. 1971). Other courts have been more skeptical of the hardships claimed by an employer or union as a result of some employees' failure to pay union dues or assessments under a union

security clause. These courts have remanded the actions for more adequate proof of the alleged hardships before deciding whether there has been a "reasonable accommodation." *Anderson*, at 400; *Burns v. Southern Pac. Transp. Co.*, 589 F.2d 403 (9th Cir. 1978), *cert. denied*, 439 U.S. 1072, 59 L. Ed. 2d 38, 99 S. Ct. 843 (1979).

The present case differs from the cases cited above, however, since plaintiff does not contend merely that the free exercise of his religion has been impaired. Rather, he sees the statutory proviso contained in RCW 41.56.122(1) as an expression of a broad legislative purpose to facilitate the free exercise of religion and argues merely that the State *may not distinguish between* religious principles held by organized groups and personal religious principles by individuals unaffiliated with organized groups. Plaintiff argues that the proviso violates the equal protection clause of the United States Constitution by favoring one type of religious belief over another. Further, he argues that proper equal protection analysis requires the court to scrutinize strictly the statute where, as here, a fundamental right, religion, is at stake. *Shapiro v. Thompson*, 394 U.S. 618, 22 L. Ed. 2d 600, 89 S. Ct. 1322 (1969). In such a case, the court must determine if a state has a *compelling interest* in infringing on the fundamental right at stake. *State v. Meacham*, 93 Wn.2d 735, 740, 612 P.2d 795 (1980); *Yakima County Deputy Sheriff's Ass'n v. Board of Comm'rs*, 92 Wn.2d 831, 834–35, 601 P.2d 936 (1979). Plaintiff concludes that the state interest in labor peace, which underlies the provision for union security clauses, is insufficiently compelling to justify the legislative choice that favors only the beliefs of established religious groups for exemption from union assessments.

I find it unnecessary to analyze the case in these terms, however, in light of the United States Supreme Court's recent decision in *Thomas v. Review Bd.*, ___ U.S. ___, 67 L. Ed. 2d 624, 101 S. Ct. 1425 (1981), a case which the majority wholly fails to understand. The majority asserts that the present case is factually distinguishable from *Thomas*,

which involves a person whose religious beliefs diverged from the known dogma of the religious organization in which he held a membership. The majority concludes that Thomas' personal religious beliefs are somehow qualitatively different, for purposes of analysis, from the merely personal religious beliefs held by plaintiff. Although the opinion goes on to say that it does not matter which way *Thomas* is read in this regard, according to the majority, the reason it does not matter is that the case is ruled by *Abood*. As I have demonstrated, *Abood* is simply not controlling in a case such as this, where the legislature has provided a statutory exemption on religious grounds to public employees covered by a union security clause. RCW 41.56.122(1).

In *Thomas*, the Supreme Court upheld Thomas' refusal to make tank turrets because such work conflicted with his personal religious beliefs. The court explained:

> We see, therefore, that Thomas drew a line, and it is not for us to say that the line he drew was an unreasonable one. Courts should not undertake to dissect religious beliefs because the believer admits that he is "struggling" with his position or because his beliefs are not articulated with the clarity and precision that a more sophisticated person might employ.

Thomas, at 632. The court elaborated:

> [T]he guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect. Particularly in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. *Courts are not arbiters of scriptural interpretation.*

(Italics mine.) *Thomas*, at 632.

I have trouble understanding how, under *Thomas*, this court can hold that the statutory proviso at issue here may be applied to members of a religious group, no matter what the content of their religious beliefs, and yet not apply to persons who hold religious beliefs but who are not so affiliated. In my view, this is a distinction without a difference.

Is it logical in this case to deny plaintiff's request for relief because he is not affiliated with a church, yet grant him relief if he merely rejoins his Methodist Church? Apparently, the majority would permit plaintiff to maintain his personal religious beliefs without adopting the tenets of the Methodist Church and would grant him relief due to his church membership. This places an undue premium on church membership rather than focusing on sincerely held religious beliefs. The court in *Thomas* has made it unmistakably plain that courts cannot inquire into the quality of religious beliefs, other than to make an initial determination that such beliefs are sincerely held. *See United States v. Seeger*, 380 U.S. 163, 13 L. Ed. 2d 733, 85 S. Ct. 850 (1965); *Welsh v. United States*, 398 U.S. 333, 26 L. Ed. 2d 308, 90 S. Ct. 1792 (1979). Although it may be true that the burden on plaintiff's exercise of his religion is much less coercive and important than the burden on Thomas, who was penalized for his religious beliefs by being declared ineligible for employment benefits, the basic analysis remains the same. If a person's beliefs are sincerely perceived as components of his or her religion, the state may not impose burdens on the exercise of those beliefs by labeling them "personal". *Thomas*, at 634.

Although I am in considerable sympathy with the majority's viewpoint and further agree that the consequence of my conclusion is that the proviso may thwart the legislature's desire to maintain labor peace in the public sector through union security clauses, I am of the opinion that the United States Supreme Court gives this court no alternative but to hold that the proviso must apply to all religious beliefs, regardless of whether those professing them are members of organized religious groups or are merely individuals whose personal beliefs serve the same function as deeply held religious values.

STAFFORD, UTTER, and HICKS, JJ., concur with WILLIAMS, J.

THE SUPREME COURT OF WASHINGTON

LEON G. GRANT,

Appellant,

v.

JOHN SPELLMAN, ET AL,

Respondents.

No. 47441-9

ORDER

DENYING MOTION
FOR RECONSIDERTION

The Court having decided by majority vote that the appellant's motion for reconsideration should be denied.

It is ordered that the motion be and it hereby is denied.

Dated this 8th day of December, 1981.

ROBERT F. BRACHTENBACH
Chief Justice

96 Wn.2d 454

THE SUPREME COURT OF WASHINGTON

LEON G. GRANT, Appellant, v. JOHN SPELLMAN, in his capacity as King County Executive; LAWRENCE WALDT in his capacity as Sheriff/Director of Public Safety; ALBERT G. ROSS in his capacity as Personnel Director of King County; LOCAL 519 of the Public Safety Employees Union; KING COUNTY, a Municipal Corporation; PUBLIC EMPLOYEES RELATIONS COMMISSION of the State of Washington and MARVIN L. SCHURKE in his capcity as its Executive Director, and PAUL H. ROBERTS in his capacity as a commissioner thereof, and DON E. OLSON, JR. in his capacity as a commissioner thereof, and MARY ELLEN KRUG in her capacity as chairman thereof, AND EACH OF THEM, Respondents.	COURT OF APPEALS CAUSE NO. 8438-1-I RULING ACCEPTING CERTIFICATION

This appeal, which as certified to the Supreme Court by Division One

of the Court of Appeals pursuant to RCW 2.06.030 and RAP 4.2, appears to present, inter alia, the following issue for determination:

> Do a public employee's personal religious beliefs, which are not related to membership in any church or religious body, qualify for safeguarding from the effect of union security agreements under the second proviso in RCW 41.56.122(1), and if not is the proviso unconstitutional under the First and Fourteenth Amendments?

Certification is hereby accepted and Court of Appeals Cause No. 8438-1-I is hereby transferred to the Supreme Court for determination on the merits.

DATED at Olympia, Washington, this 11th day of December, 1980.

GEOFFREY CROOKS
COMMISSIONER

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

LEON G. GRANT, Petitioner, v. JOHN SPELLMAN, etc., et al., Respondents.	)	NO. 864 251 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DISMISSING PETITION

This matter came before the Court on December 14, 1979 for a review of a Public Employment Relations Commission decision in a contested case. The Court had before it the record that was before the Public Employment Relations Commission, the briefs filed by King County, the Public Employment Relations Commission and Public Safety Employees Union Local 519, and the two briefs filed by Petitioner Leon Grant. The Court heard oral

argument from all parties.

On the basis of the above, the Court makes the following Findings and Conclusions and directs the entry of an Order sustaining the Public Employment Relations Commission decision:

FINDINGS OF FACT

1. King County is a "public employer" as that term is defined in RCW 41.56.030.

2. King County and Public Safety Employees Union Local 519 ("Local 519") are parties to a collective bargaining agreement which sets the terms and conditions of employment for certain employees of King County's Public Safety Department.

3. Petitioner Leon Grant is employed as a sergeant in the bargaining unit represented by Local 519.

4. In addition to setting other terms and conditions of employment, the

parties' contract includes a union security clause which requires that affected bargaining unit members tender periodic payments to the union as a condition of continual employment. The clause does not require that anyone become a member of Local 519.

5. A portion of the union security clause provides "that employees with a bona fide religious objection to union membership and/or association based on the bona fide tenets of teachings of a church or religious body of which such employee is a member shall not be required to tender those dues or initiation fees to the Union ...." The clause provides for payment to a charity in lieu of payment to the union.

6. The quoted contract provision is virtually identical to the language of RCW 41.56.122 which requires such

protection for "the right of non-association of public employees based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member."

7. Petitioner Leon Grant asked Local 519 to rule that he fit within the exemption. Local 519 rejected the request stating that his objection to tendering money to Local 519 was not based on bona fide religious tenets or teachings of a church or religious body.

8. Petitioner Leon Grant had earlier sought to have the entire union security clause stricken as unconstitutional in Grant v. Spellman King Co. No. 832804 (1978). The Court rejected his demand and that decision was not appealed.

9. After Local 519 turned down his request, Petitioner Grant petitioned the Public Employment Relations Commission to

direct Local 519 to grant his request.

10. Petitioner Grant filed affidavits in support of the position stated in his petition to the Public Employment Relations Commission.

11. All parties to the Public Employment Relations Commission proceeding waived the right to a hearing and submitted the matter on briefs and the affidavits filed by and on behalf of Petitioner Grant.

12. The Executive Director of the Public Employment Relations Commission denied the petition. He stated that Mr. Grant's "objections are based on personal beliefs" and are thus outside of the scope of the exemption at issue.

13. On appeal, the full Public Employment Relations Commission sustained the Executive Director in a 2-1 vote. It held that the exemption was available

only to those who based their objections on the tenets or teachings of a church or religious body of which the public employee was a member. It found that petitioner did not ground his objections in such tenets or teachings. It held that petitioner's "claim would broaden the exemption in a manner which would tend to destroy the basic intent of the legislature."

14. Petitioner Grant brought the Public Employment Relations Commission decision before the Court for review.

15. In his original pleading, Petitioner Grant raised issues other than the request that the Court review the Public Employment Relations Commission decision. However, those issues were abandoned at oral argument and the sole issue remaining in the case was whether or not the Court should sustain or reverse the Public Employment Relations Commission

decision or remand it for further action by the Commission.

16. Petitioner conceded that his objection to tendering money to Local 519 are based on personal beliefs. However, he argued that those views were intensely held and took the place of a traditional religion.

17. Petitioner argued that RCW 41.56.122's use of the term "bona fide religious tenets or teachings of a church or religious body" must be read disjunctively. He went on to argue that his beliefs concerning union support are "religious tenets" and thereby bring him within the exemption.

18. Respondents argued that the exemption applied only to those whose objections were grounded in tenets or teachings of a religious body or group rather than individual beliefs or opinions.

19. Respondents also argued that Petitioner's interpretation of the law would violate the intention of the legislature to permit union security clauses as an important element of stable labor relations.

CONCLUSIONS OF LAW

20. This Court has jurisdiction of this matter pursuant to RCW 34.04.130.

21. The issue of the case is whether the Public Employment Relations Commission correctly interpreted the language of RCW 41.56.122 in ruling that Petitioner Grant is not eligible for the alternate payment procedure provided in that law.

22. In interpreting statutes, the Court and administrative agencies must apply rules of construction that have been set down in a series of cases over the years.

23. One such rule is that the legi-

slature intends a statute to accomplish what the statute in its face appears intended to accomplish.

24. Another such rule is that clear and unambiguous language means what it states.

25. In this case, emphasis was placed on the word "tenet" as used in the phrase "bona fide religious tenets or teachings of a church or religious body.

26. Webster's 3d International Dictionary defines the term tenet as:

> "a principle, belief, or doctrine generaly held to be true, esp. one held in common by member of an organization, group movement, or profession; a personal opinion.

27. The first portion of the definition refers to a belief held by some group. The second portion, which is designated archaic, refers to personal opinions such as those advanced by Peti-

tioner.

28. The cited rule of construction means that legislature is presumed to use a word in its current rather than archaic sense. As a consequence, purely personal beliefs are outside the term "tenet" as used in RCW 41.56.122.

29. This conclusion is also dictated by the fact that the interpretation advanced by petitioner would create an uncontrollable exemption to union security clauses and orderly labor relations that RCW 41.56.122 was intended to foster. In addition, the Public Employment Relations Commission and ultimately the Courts would be placed in the impossible position of evaluating individual beliefs and opinions on a case by case basis.

30. The exemption section of RCW 41.56.22 was intended to balance the state's interest in stable labor relations

with the individual's right to religious freedom. This clause achieves the necessary balance and it properly protects religions from governmental encroachment.

31. The Public Employment Relations Commission properly interpreted and applied RCW 41.56.122 to the facts of this case.

ORDER

The Court hereby ORDERS the entry of judgment in favor of Defendants dismissing the Petition in this case and sustaining the decision of the Public Employment Relations Commission.

Done in open Court this 6th day of February, 1980.

GEORGE H. REVELLE
JUDGE

Presented by:

/s/
John Burns
Attorney for Respondent
Local 519

/s/
Richard Elliott
Attorney for King County
and King County officials

/s/
Richard Heath
Attorney for Public Employment
Relations Commission and
Commission officials

Approved as to form,
Notice of Presentation
Waived:

/s/
George Haynes
Attorney for Petitioner

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of: LEON GRANT For determination of a dispute concerning union security arising under a collective bargaining agreement between KING COUNTY and PUBLIC SAFETY EMPLOYEES LOCAL 519	Case No. 1622-DR-78-14 Decision No. 591-A PECB DECISION ON REVIEW

ATTORNEYS OF RECORD:

Puro & Haynes, by George Cleve Haynes, Attorney at Law, for the petitioner.

Hafer, Cassidy & Price, by John Burns, Attorney at Law, for the union.

Christopher T Bayley, King County Prosecuting Attorney, by Richard W. Elliott, Deputy, Civil Division, for the employer.

This matter is before the Public Employment Relations Commission on a petition

for review filed by the petitioner. The Executive Director concluded from the petition and the affidavits filed in support of the petition that no issue of material fact existed; and concluded, pursuant to WAC 391-21-900, that the petitioner had not asserted facts which, as a matter of law, could constitute a basis for a ruling in his favor.

POSITIONS OF THE PARTIES

The petitioner asserts that the "beliefs" on which he claims exemption from the obligations of a union security agreement are "religious in nature", and that the religious beliefs of one individual are sufficient under the laws and the Constitution of the State of Washington and the United States to require petitioner's exemption. The petitioner asks the Commission to address the constitutional issues, and distinguishes the beliefs ad-

vanced in three previous cases as personal, non-religious beliefs.

The union asks the Commission to sustain the decision of the Executive Director. It directs attention to the "bona fide religious tenets or teachings of a church" language of the statute, and contends that the petitioner is not within the scope of the exemption created by RCW 41.56.122. The union argues that the statute contains a constitutionally acceptable accomodation of recognized religious beliefs of a type required by the Courts.

The County announced its intention early in the processing of the case to take no active part in the matter. It has filed no brief on review.

DISCUSSION

This is a case of first impression before the Commission. The issue is the eligibility of the petitioner to make payments to a charity as an alternative to payments of initiation fees and dues to Public Safety Employees Local 519. There is no question of membership. The collective bargaining agreement provides, in section 2 of Article II:

> "It shall be a condition of employment that all regular, full-time employees shall become members of the union and remain members in good standing ... Timely payment of regular union dues will constitute membership in good standing for the purposes of this article." (Emphasis supplied)

There follows a proviso which meets the requirements of RCW 41.56.122(1), which provides in part:

> "A collective bargaining agreement may: (1) Contain union security provisions: Provided, That nothing in this section

> shall authorize a closed shop provision: Provided further, That agreements involving union security provisions must safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member. Such public employee shall pay an amount of money equivalent to regular union dues and initiation fee to a nonreligious charity or to another charitable organization mutually agreed upon by the public employee affected and the bargaining representative to which such public employee would otherwise pay the dues and initiation fee. The public employee shall furnish written proof that such payment has been made. If the public employee and the bargaining representative do not reach agreement on such matter, the Commission shall designate the charitable organization.

The statute is implemented by WAC 391-21-900. The petitioner does not now belong to any church or religious body.

Chapter 41.56 RCW as we now have it is the product of several legislative actions

since 1967. Amendments enacted in 1969 created an interim committee on public employees collective bargaining to evaluate collective bargaining practices and to make recommendations to the legislature on necessary or desirable changes of the law. That committee reported a number of proposed amendments, including the union security and religious exemption concepts now contained in RCW 41.56. 122(1). Although many specific differences are to be noted, the system of relationships and collective bargaining created and regulated by RCW 41.56 is patterned after the system of collective bargaining existing in the private sector under the National Labor Relations Act.

Union security is a well-defined and operative concept in private sector collective bargaining relationships. Private

sector law and practice does not provide a general exemption from union security financial obligations based on individual conscientious objections. When the legislature amended RCW 41.56 in 1973 to add RCW 41.56.122(1), it had before it the National Labor Relations Act with years of interpretation and application, as well as two specific recommendations from the committee created by RCW 41.56.400. We interpret the statute as expressing the basic intent of the legislature to authorize union security agreements in public employment under RCW 41.56 on a basis generally similar to union security practices prevailing in the private sector. The "religious" exception contained in RCW 41.56.122(1) is interpreted as a limited exception to accommodate the doctrines of churches or regligious bodies of which public employees may be members.

Union security for public employees has withstood constitutional tests in both the United States Supreme Court, Abood v. Detroit Bd. of Ed., 431 U.S. 209 (1977) and in our own Supreme Court, Capitol Powerhouse Engineers v. State, 89 Wn2d 177 (1977). If there is any defect in the statute, it is in the attempt to create an exception rather than in the basic authorization of union security agreements.

The petitioner does not allege that he falls within the limited exception which we find in the statute. His claim would broaden the exemption in a manner which would tend to destroy the basic intent of the legislature. The decision of the Executive Director is affirmed.

DATED at Olympia, Washington, this

3rd day of May, 1979.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

/s/
PAUL A. ROBERTS, Commissioner

/s/
DON E. OLSON, JR., Commissioner

DISSENTING OPINION

I respectfully dissent from the decision reached by my colleagues. Like the Executive Director and my colleagues, I would not propose that this administrative agency should decide the constitutionality of the statute which it administers. However, we have an obligation if at all possible to interpret that statute in a manner which will make it constitutional.

Interpreted in the disjunctive, the statute specified an exception for "religious tenets" or "teachings of a church or religious body of which such public employee is a member". Having "religious tenets" does not require membership in a church or religious body.

The statute also states, in the disjunctive, that the alternative payments be

made "to a non-religious charity" or "to another charitable organization mutually agreed upon by the public employee affected and the bargaining representative". Apparently, the employee is free to choose a "non-religious charity" but must reach agreement on any other (including "religious") charity.

In the instant case, the petitioner contends that his objections are based on bona fide religious tenets. He does not now belong to any church or religious body. His petition is supported by affidavits of eminent citizens based on their personal observation of the petitioner.

In his affidavit of August 29, 1978, petitioner affirms his belief in God, a Supreme Being ... ch is the source of all

goodness, and in the Christian Trinity. He believes taht Jesus was the son of God on earth. He has been baptized as a Christian. Although he has resigned from the Methodist church, his Christian religious feelings are strong. He attributes this strength to God and his perception of moral right which enters him through his human conscience. He consistently seeks to know what is morally right and wrong and believes that God enters into his life and fills the darkness of doubt and wonder with the light of truth. His objection to affiliation with Local 519 stems directly from his belief in God, the spirit of truth and goodness which is in everyone. That truth tells him that he cannot support the policies of organizations because he has no control over them. He believes that no police officer should belong to any organization

that could influence his decision-making on the job. He believes that membership in Local 519 would jeopardize his ability to do his job. He believes that a Christian does that which is right and rejects that which is wrong. This direction, he indicates, comes from God and is often subtle. To know God's will, he studies the Bible and meditates.

In the petitioner's search for divine direction, he has the promise of the prophet Isaiah:

> "And thine ears shall hear a word behind thee, saying, This is the way, walk ye in it, when ye turn to the right hand and when ye turn to the left." Chapter 30, vv. 21 (King James Version)

Many will find the petitioner's rejection of any other influence outside the duties, responsibilities and orders imposed on a deputy sheriff narrow and absolute.

Alred, Lord Tennyson, reminded us that

> "... God fulfills himself in many ways, Lest one good custom should corrupt the world."
>
> Mort de'Arthur

But such reservations do not detract from the essentially religious basis of the petitioner's objection to supporting organizations over which he as an individual has little influence and no effective control. Even William Wordsworth invoked "duty" as

> "Stern Daughter of the Voice of God."[1/]

The Master Christian is quoted in the Gospel

1/ "Stern Daughter of the Voice of God!
O Duty! if that name thou love
Who art a light to guide, a rod
To check the erring, and reprove;
Thou, who art victory and law
When empty terrors overawe:
From vain temptations dost set free:
And calmst the weary strife of frail humanity!"

from Ode to Duty (1807)

according to St. Matthew as saying:

> "Thou shalt love the Lord thy God with all thy heart, and with all they soul, and with all thy mind. This is the first and great commandment. And the second is like unto it, Thou shalt love thy neighbour as thyself. On these two commandments hang all the law and the prophets. Chapter 22, vv. 37-40 (King James Version).

While not admitted as evidence at this stage in these proceedings, the several affidavits filed in support of the petition indicate the availability of testimony on behalf of the petitioner as to the "bona fide" nature of his religious beliefs. Government must tread lightly when it considers a person's religious tenets, and must construe statutes requiring such consideration so as to avoid constitutional questions. I would find that bona fide religious tenets of an individual are within the exception provided by RCW 11.56.122(1).

Serious doubts must also be raised as to the constitutionality of a provision requiring "mutual agreement" on a "religious" charity or governmental selection between "religious" charities. While this seems an invasion of the employee's freedom of religion, it is not necessary to reach that issue at this stage in this case.

DATED at Olympia, Washington, this 3rd day of May, 1979.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

/s/
MARY ELLEN KRUG, Chairman

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of LEON GRANT For determination of a dispute concerning union security arising under a collective bargaining agreement between KING COUNTY and PUBLIC SAFETY EMPLOYEES LOCAL 519	)	Case No. 1622-DR-78-14 Decision No. 591-PECB MEMORANDUM DECISION

BACKGROUND

The petition in this matter was filed with the Commission on August 4, 1978. The petition alleges that the Public Safety Employees Local 519 (hereafter PSE) has refused to allow the petitioner to make payments to a selected charity instead of paying PSE the amount required under

the union security clause in the collective bargaining agreement between PSE Local 519 and King County. The parties waived a field investigation of this matter, and submitted their respective positions in affidavits and briefs.

PETITIONER'S POSITION

Petitioner Grant is a Police Sergeant employed by the King County Department of Public Safety. He states he has conscientious objections to association with Public Safety Employees Local 519. Although Grant is not a member of an established church, he claims his conscientious objections occupy the same place as traditional religious tenets do in the lives of others. On that basis, he seeks an exemption from conformance with the union security clause included in a collective bargaining agreement cov-

ering police officers, sergeants and some lieutenants.

In his affidavits, Grant swears:

> "4. ...In my own words, when I speak of nonmembership in Local 519, I mean my nonassociation with Local 519 based on bona fide religious tenets.
>
> 5. I am of the firm and unshakable belief that collective bargaining in the public safety sector presents a conflict of interest to employees engaged in bargaining, is an improper vehicle for resolving employment disputes between the public employer and its employees, and involves essential political decisions that should be made in a more independent fashion.
>
> ...
>
> 9. I do not wish to give financial support or accept financial support from organizations which adhere to views and practices with which I do not agree.
>
> ...
>
> 12. My objection to membership in Local 519 stems directly from my belief in God. God is the spirit of truth and goodness which is in everyone. That truth says to me that I cannot support the poli-

> cies of organizations because I have no control over them. These organizations adopt policies which are opposed to my simple beliefs, or they at the very least have the real and immediate potential of doing so. I have in my own life known many examples of this. I have seen organization follow policies of racism; I believe we are all one family of God and that racism--white against black or black against white or any other kind--is ungodly and wrong. I dropped from membership in organizations which fostered racism. That is one example but a vivd one for me."

In an affidavit supporting the petition, a law professor swears that he knows Grant to be a religious person who does believe in God, but rejects the institutionalized church because it does not fulfill his concept of the mission of the church. The President-Director of the Church Council of greater Seattle swears that Grant's dedicationto conscience is similar to that held by conscientious objectors to war that the affiant had evaluated.

UNION'S POSITION

The Public Safety Employees Local 519 opposes the petition in this matter for three reasons: the petitioner's beliefs are not based on any religious tenets or teachings of a church; RCW 41.56.122 created a limited exception to the duty to conform to agency shop rules only to accomodate recognized religious beliefs, and if the exception were to include people who conscientiously objected to supporting organizations of any kind, the petitioner would not qualify since he does not object to joining all organizations.

DISCUSSION

In RCW 41.56.122, the state legislature authorized that collective bargaining agreements contain union security clauses, but added the proviso:

> "That agreements involving union security provisions must safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member. Such public employee shall pay an amount of money equivalent to regular union dues and initiation fee to a nonreligious charity or to another charitable organization mutually agreed upon by the public employee affected and the bargaining representative to which such public employee would otherwise pay the dues and initiation fee."

The Commission has never before had occasion to rule on a petition requesting authorization of payments to a charity in lieu of paying fees under RCW 41.56.122. However, three such petitions have been presented to the Commission under a similar section of the Educational Employment Relations Act, RCW 41.59.100. See: Evergreen School District, Decision No. 221, (EDUC, 1977); Vancouver School District, Decision No. 224, (EDUC, 1977); and Issaquah School District, Decision No.

262, (EDUC, 1977). Each time the petition was denied because the petitioner did not advance the specific, bona fide religious tenets or teachings of a church or religious body of which the petitioner was a member.

There have been no facts presented to justify a different holding on the petition in this case, even though the petition was filed under the Public Employees Collective Bargaining Act. Petitioner Grant is demanding an administrative expansion of a very narrow exemption. Since the legislature specifically limited the exception, PERC is without the authority to broaden the scope.

The petition alleges that 41.56.122 is unconstitutional because it favors reli-

gious people over nonreligious people. To make the statute constitutional, the petitioner argues, it must be interpreted to include the conscientious beliefs of a single individual. However, the scope of the authority of the Executive Director in this issue is limited by WAC 391-21-900 to determining whether an employee is eligible to make alternative payments based solely on "bona fide religious tenets or teachings of a church or religious body of which the employee is a member". It is for the courts to determine if the scope of this exemption is unconstitutionally narrow.

To further support his argument that the statute in question was to cover conscientious objectors, the petitioner submits an affidavit from the Field Representative of the Washington Conference

of Seventh Day Adventists, who assisted in creating the nonassociation clause of RCW 41.56.122. The affiant swears:

> "8. To my knowledge, the non-association clause of RCW 41.56.122 was intended to apply to any public employee with reasonable convictions against union membership, who can demonstrate that those convictions are religious in nature and that they are guiding principles in his life."

However, Public Employees Collective Bargaining in Washington - The First Biennial Report submitted to the 42nd Session of the Washington State Legislature, Revised Second Edition, 1971, (page 4),[1/] contains legislative history of RCW 41.56.122 that states the clause was recommended to "preserve the cohesive-

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1/ Submitted to the governor and the legislature by the Public Employees Collective Bargaining Committee created by RCW 41.56.400 through .420.

ness of the employee organization without impairing religious beliefs". (emphasis added) The petitioner's objections are based on personal beliefs.

It is significant that Grant is not petitioning for exclusion from union membership. That is freely available. PSE Local 519 has a rebate procedure established for nonmembers to ensure that such people are not required to support activities unrelated to the costs of the collective bargaining. Grant is seeking an exclusion from the requirement to pay even the agency fee. He requests in his petition to pay his portion of collective bargaining costs to a nonreligious charity. The request is denied because the statute does not contemplate granting the exemption to a conscientious objector who is not a member of an organized reli-

gion.

The petitioner also requested that PERC provide temporary relief by granting an order preventing his dismissal by the employer. However, the PSE agreed to stay enforcing the clause provided that the petitioner agreed to pay an amount equivalent to his agency fee into a special fund in a local bank, pending the issuance of this decision. Therefore the petitioner's request need not be ruled upon here, and the transfer of funds is not required until the period for review of this order has expired.

In connection with the foregoing, the Executive Director makes the following:

FINDINGS OF FACT

1. Leon Grant is employed as a Police Sergeant with the King County Department of Public Safety.

2. A collective bargaining agreement exists between King County and the Public Safety Employees Local 519 covering police officers, sergeants and some lieutenants in the King County Department of Public Safety. That agreement contains a union security provision under which Grant is obligated to make payments.

3. Public Safety Employees Local 519 has a political activity rebate procedure to calculate a representation fee due from nonmembers.

4. A dispute has arisen concerning the obligation of the petitioner to pay

representation fees to the Public Safety Employees pursuant to the mentioned union security provision; the jurisdiction of the Public Employment Relations Commission has been invoked by the petitioner pursuant to WAC 391-21-900; a petition, supporting affidavits and a brief were filed by the petitioner which advanced certain personal beliefs but failed to advance any specific tenets or teachings of a religious body of which he is a member as the basis for a claim of a right to nonassociation.

CONCLUSIONS OF LAW

The petitioner has not set forth issues of fact which cannot be disposed of without a hearing; and has not set forth facts which, as matter of law, could constitute a basis for a ruling in his favor pursuant to WAC 391-21-900.

ORDER

1. If no petition for review of this order is filed with the Public Employment Relations Commission within 20 days following the date of this order, King County and Leon Grant shall cause to be remitted to Public Safety Employees Local 519 any and all funds to which it is entitled under union security clauses in applicable collective bargaining agreements between King County and Public Safety Employees Local 519.

2. If a petition for review of this order is filed with the Public Employment Relations Commission within 20 days following the date of this order, such filing shall automatically stay the effect of this order pending a ruling thereon by the Commission.

Dated at Olympia, Washington, this 13th day of February, 1979.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

/s/

MARVIN L. SCHURKE, Executive Director

Attorneys of Record:

Puro & Haynes, by George Cleve Haynes, Attorney at Law, for the petitioner.

Hafer, Cassidy & Price, by John Burns, Attorney at Law, for the union.

Opposition

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Supreme Court, U.S.
FILED
APR 12 1982
ALEXANDER L. STEVAS
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-1666

LEON G. GRANT,

Petitioner,

—v.—

WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION, JANE R. WILKINSON, ROBERT J. WILLIAMS, and MARK C. ENDRESEN, as Members of the Commission, MARVIN L. SCHURKE, as Executive Director of the Commission, LOCAL 519 OF THE PUBLIC SAFETY EMPLOYEES UNION, RANDALL REVELLE, as King County Executive, BERNARD G. WINCKOSKI, as Director of the King County Department of Public Safety and ALBERT G. ROSS, as King County Personnel Manager,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF IN OPPOSITION OF RESPONDENTS REVELLE, WINCKOSKI AND ROSS

NORM MALENG
King County Prosecuting Attorney

RICHARD H. HOLMQUIST
Chief Civil Deputy Prosecuting Attorney
(Counsel of Record)

RICHARD W. ELLIOTT
Senior Deputy Prosecuting Attorney

Attorneys for Respondents Randall Revelle, Bernard G. Winckoski and Albert G. Ross

E550 King County Courthouse
Seattle, WA 98104
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QUESTION PRESENTED FOR REVIEW

A Washington State statute exempts public employees from payment of dues or service fees to union bargaining representatives where the employees object to such payments on the basis of "bona fide religious tenets or teachings of a church or religious body of which such public employee is a member." Does the statute violate the Religion Clauses of the First Amendment or the Equal Protection Clause of the Fourteenth Amendment by not extending the exemption to one who objects on account of personal reasons which do not arise out of membership in any church or religious body?

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STATEMENT OF THE CASE

Petitioner Leon A. Grant is employed as a sergeant in the King County, Washington, Department of Public Safety. King County and Respondent Public Safety Employees Local 519 (hereinafter referred to as "Local 519") are parties to a collective bargaining agreement which sets the terms and conditions of employment for certain employees of the Department of Public Safety. Petitioner is included in the bargaining unit represented by Local 519. Respondents Randall Revelle, Bernard G. Winckoski and Albert G. Ross are officials of King County.

The parties' contract includes a union security clause, which requires that members of the bargaining unit affected by the agreement tender periodic payments to the union as a condition of continued employment. The clause does not require that anyone become a member

of Local 519. There are no requirements which might flow from membership, nor must a member of the bargaining unit affirm or adopt union policies. All that is required is that an employee pay a fair share of the costs incurred by the union in representing the bargaining unit, in this instance $11.20 per month.[1] Local 519 has a dues rebate procedure to ensure that nonmembers are not required to support activities unrelated to the

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1. The union security provision contained in the agreement between the County and Local 519, as authorized by State statute (Wash. Rev. Code § 41.56-.122(1)), establishes what is commonly referred to as a "modified agency shop." An agency shop arises where all employees in the bargaining unit must pay the bargaining representative a service fee as a condition of continued employment but are not required to join the labor organization. The modification is that employees with bona fide religious objections may make contributions to certain charities in lieu of the fee.

costs of collective bargaining. Thus, no part of the nonmember service fee can be utilized for the political activities of Local 519.

The pertinent contract provision contains language nearly identical to that in the Washington State Public Employees' Collective Bargaining Act, Wash. Rev. Code chap. 41.56, which provides for union security agreements but permits exemptions for person who object to association on religious grounds. The statute reads as follows:

> A collective bargaining agreement may:
>
> (1) Contain union security provisions: **Provided**, That nothing in this section shall authorize a closed ship provision: **Provided further**, That agreements involving union security provisions must safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member. Such public employee shall pay an amount of money equivalent to regular union dues and initiation fee to a nonreligious charity or to another charitable organization mutually

> agreed upon by the public employee affected and the bargaining representative to which such public employee would otherwise pay the dues and initiation fee. . . .

(Emphasis added.) Wash. Rev. Code § 41-.56.122(1).

Petitioner asked Local 519 to rule that he came within the exemption to the union security clause. Local 519 rejected the request on grounds that petitioner's objection to tendering money to the union was not based on bona fide religious tenets or teachings of a church or religious body. Plaintiff then petitioned the Washington State Public Employment Relations Commission ("hereinafter referred to as "PERC") to direct Local 519 to grant his request.[2]

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2. PERC is a three-member board created by State statute, Wash. Rev. Code. chap. 41.58, for the purpose of preventing or minimizing disruptions to the public wel-

In denying the petition, the Executive Director of PERC concluded that petition's "objections are based on personal beliefs" and were therefore outside the scope of the statutory exemption at issue. (Pet. Cert., App. 10f.)

Petitioner then appealed to the full Commission which sustained the Executive Director by a 2-1 vote. PERC held that the religious exception of Wash. Rev. Code § 41.56.122(1) constitutes a limited exception to accommodate the doctrines of churches or religious bodies of which public employees may be members. The Commission further found that, rather

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fare growing out of labor disputes in public employment. PERC certifies bargaining representatives and adjusts and settles grievances and disputes arising out of employer-employee relations. The Commission is authorized by Wash. Rev. Code § 41.56.160 to prevent unfair labor practices and to issue appropriate remedial orders.

than alleging coverage within this limited exception, petitioner was seeking to broaden the exemption in such a manner which would tend to destroy the basic policy of the legislature favoring union security. (Pet. Cert., App. 7e-8e.)

Petitioner challenged this administrative decision by filing for review in the King County Superior Court under authority of the Washington State Administrative Procedures Act, Wash. Rev. Code § 34.04.130.

In his affidavit, which is part of the record in that action, petitioner testifies that he is a religious person but belongs to no organized religion. He states his personal beliefs in considerable detail, and claims membership in the union would be contrary to those beliefs.[3] He is of the opinion that col-

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3. As already discussed, the modified agency shop agreement does not require

lective bargaining in the public safety area creates a conflict of interest, is an improper vehicle for resolving employer/employee disputes, and involves essentially political decisions that should be made in a more independent fashion. (Pet. Cert., App. 2f-4f.) He does not believe that Local 519 is sympathetic to the position of minorities. His objections to tendering any money to Local 519, even the service fee, are based on an amalgam of ethical, political and personal religious beliefs which in his mind take the place of a traditional organized religion.

The trial court affirmed PERC and concluded that the clear and unambiguous language of the statute meant that purely personal beliefs were outside the term

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union membership as a condition to continued employment.

personal beliefs were outside the term "tenet" as used in RCW 41.56.122 and that only those who held beliefs in "bona fide religious tenets or teachings of a church or religious body" came within the exemption created by the statute.

By a 5 to 4 vote, the Washington State Supreme Court affirmed the decisions of the trial court and PERC, holding that maintenance of the carefully-developed statutory scheme of labor relations in the public sector is a matter of compelling state interest. Grant v. Spellman, 96 Wn.2d 454, ____ P.2d ____ (1981). (Pet. Cert., App. 1a.) The court based its decision in part on the opinion of the United States Supreme Court in Abood v. Detroit Bd. of Education, 431 U.S. 209 (1977), which held that union security provisions in public sector employment do not violate First Amendment freedom of association. The

Washington court reasoned that no greater burden is placed upon the personal religious beliefs of petitioner in the instant case than was placed on the associational rights of the litigants in Abood. 96 Wn.2d at 461-62. (Pet. Cert., App. 8a -9a.) The court took note of the trial court's conclusions that adoption of petitioner's view would create an uncontrollable exemption to union security clauses and place PERC and ultimately the courts in the impossible position of evaluating the religious content of personal beliefs on a case-by-case basis. This petition for certiorari ensued.

SUMMARY OF ARGUMENT

The statute in question balances the well-established principle of union security with the rights of individual public employees to practice their religions. The Supreme Court has expressly recognized the important governmental interest in stable labor relations which underlies union security laws. The State of Washington has achieved a reasonable accommodation between these competing interests by exempting those whose dissent finds its basis in the tenets or teachings of a church or other religious group. The Constitution does not now compel that this religious exemption be broadened to allow any dissenter to avoid his fair share payment, simply by proclaiming that his personal objections rise to the dignity of a religion.

Lacking a viable Free Exercise or Establishment claim, petitioner's Equal

Protection argument is similarly vulnerable. Whether the State's interest in stable public sector labor relations be characterized as substantial or compelling, it is still sufficient to justify treating petitioner differently than those who the statute exempts.

ARGUMENT

1. The Statutory Exemption Contained In Wash. Rev. Code § 41.56.122(1) Creates A Reasonable Accommodation Between The State's Interest In Stable Labor Relations And The Interest Of Public Employees In Free Exercise Of Religion.

The cornerstone of petitioner's argument is his claim that Wash. Rev. Code § 41.56.122(1), as construed by the Washington Supreme Court impermissibly burdens his right to free exercise of religion guaranteed by the First Amendment to the United States Constitution. As will be demonstrated, however, this point is not well taken in the light of caselaw

interpreting the First Amendment.

The Supreme Court has repeatedly taught that the First Amendment's protection of religious conscience is not absolute when a religious opinion is translated into an act or refusal to act in the fact of a contrary governmental regulation. See, e.g., Braunfield v. Brown, 366 U.S. 599 (1961); Jacobson v. Massachusetts, 197 U.S. 11 (1905); Reynolds v. United States, 98 U.S. 145 (1897). Each case must be evaluated on its particular facts, and the competing interests of government and the individual must be balanced. Sherbert v. Verner, 374 U.S. 298, 403 (1963). The elements of such a balancing test include, in addition to the importance of the governmental and religious interests, the degree of interference with the religious practice. See Clark, Guidelines

for the Free Exercise Clause, 83 Harv. L. Rev. 327 (1969); Giannella, Religious Liberty, Nonestablishment, and Doctrinal Development, 80 Harv. L. Rev. 1381 (1967).

The Supreme Court has not yet ruled directly on the question at bar; namely, whether the important state interest in stable public sector labor relations must, as a matter of constitutional law, give way to and accommodate personal beliefs which are not traceable to any tenet or teaching of organized religion. The cases cited supra, however, provide a framework for analysis.

Moreover, the Court has held in the analogous area of First Amendment freedom of association that union security provisions in the private and public sectors are constitutional, so long as membership in the union is not required and the fee being paid to the union is

nothing more than payment for services rendered. See Abood v. Detroit Bd. of Education, 431 U.S. 209 (1977) (public sector); International Assoc. of Machinists v. Street, 367 U.S. 740 (1961) (private sector); Railway Employees' Department v. Hanson, 351 U.S. 225 (1956) (private sector).

The governmental interests which were at stake in Abood, Street and Hanson are identical to the State interest before the Court in the instant case. In the cases dealing with freedom of association, this Court expressly recognized the substantial and strong governmental interest in the peaceful stable labor relations promoted by a fair sharing of the costs of collective bargaining. See Abood, 431 U.S. at 223; Hanson, 351 U.S. at 233.

The fact that the instant case involves a claim under another clause of

the First Amendment does not detract from this Court's holdings recognizing the importance of the governmental interest embodied in union security statutes. Relying on the line of authorities discussed supra, the Washington Supreme Court characterized this interest promoted by Wash. Rev. Code § 41.56.122(1) as "compelling," 96 Wn.2d at 461. (Pet. Cert., App. 8a.) Accord, Gray v. Gulf, Mobile & Ohio Railroad Co., 429 F.2d 1064, 1071-72 (5th Cir. 1970).

It remains in the balancing analysis to assess the religious interest at stake, if any, and to weigh the degree of interference with that interest. Petitioner is being asked to pay $11.20 per month to bear his fair share of collective bargaining expenses. In return, petitioner receives tangible benefits as a member of the collective bargaining unit. Consistent with the guidelines set

forth by this Court in Abood, there is no forced adherence to the doctrines of unionism.

Under the collective bargaining agreement, such payments are a condition to his continued employment, as permitted by Wash. Rev. Code § 41.56.122(1). Consequently, his choice is between making the payments or seeking employment in a nonunion shop. He would not be denied a financial benefit bestowed by statute, as was the situation in cases decided by this Court which dealt with free exercise of religion in the context of unemployment security benefits. See, e.g., Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S. 707 (1981); Sherbert v. Verner, 374 U.S. 398 (1963). Rather, petitioner is merely being asked to bear his fair share of costs expended ultimately for the benefit

of the bargaining unit of which he is a member.

This impact on his personal objections to unions must be characterized as incidental, rather than substantial, especially in view of the limited purposes to which agency shop fees can be put and the fact that he would not be compelled to join an organization to which he objects. A fair reading of petitioner's affidavit reveals that he has political, ethical and moral objections to union support and that his sense of right flows from a belief in God. Religion may therefore be a component of his objections, but it is so intermixed with other personal beliefs that the religious interest at stake, if any, cannot be characterized as substantial. The nature of the religious interest and the burden on that interest are not, therefore, suffi-

cient to outweigh the important State interest fostered by the statute.

The exemption contained in Wash. Rev. Code reasonably accommodates the individual religious needs of public employees.[4] The exemption is narrow enough to respect the compelling State interest of stable labor relations embodied in the statutory principle of union security, while suffi-

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4. By applying Section 701(j) of the Civil Rights Act of 1964, as amended in 1972, to private sector union security agreements authorized by the National Labor Relations Act, 29 USC § 158(a)(3) (1976), lower federal courts have given further definition to the Free Exercise Clause and implemented a religious exemption analogous to that contained in Wash. Rev. Code § 41.56.122(1). See, e.g., McDaniel v. Essex Intern., Inc., 571 F.2d 338 (6th Cir. 1978); Cooper v. General Dynamics, 533 F.2d 163 (5th Cir. 1976), cert. denied, sub nom; International Assoc. of Machinists and Aerospace Workers v. Hopkins, 433 U.S. 908 (1977). Section 701(j) imposes a "reasonable accommodation" duty on employers.

ficiently broad to include all contrary beliefs and practices ascribable to any church or religious group. In fashioning such an exemption, the State has declined to place itself in the position of picking and choosing which personal beliefs are "religious," as distinguished from political, ethical or philosophical. Such a reasonable accommodation need not constitutionally be expanded to include petitioner and others who object for personal reasons.

Petitioner argues that this result is contrary to this Court's opinion in Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S. 707 (1981). Such is not the case.

The essence of Thomas is that the right of free exercise attaches to the beliefs of a person who has an honest conviction that his work or some other activity is forbidden by his church--in

that case the organized religion of the Jehovah's Witnesses. As in Sherbert v. Verner, 374 U.S. 298 (1963), discussed and relied upon by the Court in Thomas, a recognized, identifiable church or religious group formed the basis for the employee's beliefs and objections to a practice of his employer. The Court wisely chose not to referee an intrafaith disagreement between several employees as to whether specific defense-related work was indeed offensive to their common Faith. The true test under the First Amendment was whether the employee terminated his work on account of an honest belief that such work was forbidden by his church.

There is a meaningful difference between the plaintiff in Thomas and the petitioner in the instant case. Sergeant Grant characterizes his personal beliefs as religious and therefore takes it en-

tirely upon himself to define the breadth of his personal religion. Were his beliefs to be afforded protection under the Free Exercise Clause, then every similar dissenter would have the ability to change, at whim, the scope and application of union security clauses. Such a result would go far beyond reasonable accommodation and most certainly is not compelled by Thomas or any other decision of this Court.

2. Washington's Statute Does Not Violate The Establishment Clause.

Precedents of this Court have evolved a three-pronged test for measuring legislation against the Establishment Clause of the First Amendment. Under Committee for Public Education v. Nyquist, 413 U.S. 756, 772-73 (1973), legislation must (1) reflect a clearly secular purpose, (2) have a primary effect that neither

inhibits nor advances religion, and (3) avoid excessive governmental entanglement with religion. See also Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971). Government may legitimately enforce accommodations of religious beliefs where such accommodations do not constitute "sponsorship, financial support, [or] active involvement of the sovereign in religious activities" with which the Establishment Clause is mainly concerned. Wisconsin v. Yoder, 406 U.S. 205, 234 (1972); Walz v. Tax Commission, 397 U.S. 664, 668 (1970).

Petitioner's argument on the Establishment Clause falls far short of surmounting the standard set forth by the foregoing precedents of this Court. The exemption contained in Wash. Rev. Code § 41.56.122(1) does not involve the State of Washington in sponsorship, financial support, or other advocacy of a partic-

ular religion. Rather, the exemption distinguishes beliefs founded in religion, as that term is commonly understood, from personal beliefs, however characterized or deeply held. This is a logical and reasonable place to draw the line.

Moreover, this Court has already held that the beliefs and practices of members of minority religions can be accommodated without contravening the Establishment Clause. See Wisconsin v. Yoder, 406 U.S. 205 (1972) (exempting Amish children from compulsory education laws); Sherbert v. Verner, 374 U.S. 398 (1963) (exempting Seventh Day Adventists from state unemployment compensation requirements). The State of Washington has not focused on any particular religion but rather has created an exemption generous enough to accommodate the beliefs of all churches and religious groups. Such a statute should therefore be subject to less con-

stituional scrutiny than the ones upheld by the Court in Wisconsin v. Yoder and Sherbert v. Verner.

Were petitioner to prevail on this issue then every governmental accommodation to the free exercise of religion by a particular church or religious group would be vulnerable to attack on the basis of the Establishment Clause. All a dissenter need do would be to characterize his or her personal objections as "religious." This would make bad law.

3. Washington's Statute Does Not Deny Equal Protection Of Laws.

In connection with his argument on free exercise of religion, petitioner asserts that Wash. Rev. Code § 41.56.122(1) denies him and others similarly situated equal protection of laws as guaranteed by the Fourteenth Amendment. Petitioner reasons that free exercise of religion is

a fundamental constitutional right and that a statutory classification impinging on that right can be upheld only if justified by a compelling state interest. He concludes that there is no such compelling interest in this case, because the State's only interest in not exempting petitioner is administrative convenience, i.e., avoiding individualized determinations of whether personal objections are religious or nonreligious.[5]

Petitioner's statement of the general rule is accurate, but he misapplies it to the case at bar. First, a reviewing

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5. Petitioner's characterization of the State's interest overlooks the clear impact which expansion of the religious exemption would have on the union security principle fostered by Wash. Rev. Code § 41.56.122(1). The exemption cannot expand without a concomitant contraction of the scope of the general rule established by the statute and the policy which it promotes.

court has no occasion to apply strict equal protection scrutiny to a classification where it is determined that the act does not substantially burden free exercise of religion. This point was made clear by the Court in Johnson v. Robison, 415 U.S. 361, 375-86 (1973), a case cited by petitioner.[6]

As already discussed supra, the burden, if any, on petitioner's free exercise of religion is not substantial. In-

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6. Johnson v. Robison involved the religion and equal protection claims of a conscientious objector who performed alternative civilian service but was denied educational benefits under the Veterans' Readjustment Benefits Act of 1966. As such, it is more in point than United States v. Seeger, 380 U.S. 163 (1965), and Welsh v. United States, 398 U.S. 333 (1970), cases cited by petitioner which construe the statutory language of the selective service laws. The court in Johnson v. Robison found that the government's interest in raising and supporting armies outweighed the economic burden upon the objector's free exercise of religion.

cidental burdens on free exercise may be justified by substantial governmental interests. Johnson v. Robison, 415 U.S. at 384; Gillette v. United States, 401 U.S. 437, 461-62 (1971). After Abood v. Detroit Bd. of Education, 431 U.S. 209 (1977), and International Ass'n of Machinists v. Street, 367 U.S. 740 (1961), there can be no doubt that the governmental objective of stable labor relations, as embodied in union security, is at least a substantial, and probably a compelling, interest of the State. The statute therefore satisfies equal protection standards regardless of whether the burden, if any, on petitioner's free exercise of religion is deemed incidental or substantial.

CONCLUSION

For the reasons stated herein, the Court should deny the petition for certiorari.

Respectfully submitted,

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April 1982

Opposition

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Supreme Court, U.S.
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NO. 81-16666

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1981

LEON G. GRANT,

Petitioner,

-vs-

WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION, JANE R. WILKINSON, ROBERT J. WILLIANS, and MARK C. ENDRESEN, as Memebers of the Commission, MARVIN L. SCHURKE, as Executive Director of the Commission, LOCAL 519 OF THE PUBLIC SAFETY EMPLOYEE UNION, RANDALL REVELLE, as King County Executive, BERNARD G. WINCKOSKI, as Director of the King County Department of Public Safety, and ALBERT G. ROSS, as King County Personnel Director,

Respondents.

RESPONSE OF RESPONDENTS WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION, JANE R. WILKINSON, ROBERT J. WILLIAMS, and MARK C. ENDRESEN, MARVIN L. SCHURKE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

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Counterstatement of Question Presented

The State of Washington exempts public employees who are members of religious bodies that have tenets or teachings forbidding association with unions from the payment of agency shop fees to the union which represents them. Does the state violate the religion clauses of the First Amendment or the Equal Protection Clause of the Fourteenth Amendment by not extending the exemption to a person whose personal beliefs are religious in character but who is not a member of such a body?

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Counterstatement of the Case

Throughout the course of the litigation which has resulted in the petition which is now before this Court, each of the bodies which has made findings of fact have described Leon Grant's beliefs as personal. (App. 13(f); 7(d)). His beliefs may be religious in character, but they are nevertheless personal and not based on the tenets or teachings of any religious body of which he is a member.

Why the Writ Should be Denied

In his brief, at pp 9-10, petitioner has argued that this Court should accept jurisdiction pursuant to the standards set forth in Sup. Ct. R. 17.1(b)(c). It is submitted, however, that the reasons given by petitioner do not justify the granting of his

petition.

1. The decision of the Washington Supreme Court is not in conflict with a decision of another state court of last resort or of a federal court of appeals.

The decision of the Washington Supreme Court in this case does not conflict with the decision of another state court of last resort or of a federal court of appeals. In his petition at page 10, Mr. Grant has cited certain "analogous" cases which he contends conflict with the decision, viz., Tooley v. Martin-Marietta Corp., 648 F.2d 1239 (9th Cir.), cert. denied, ___ U.S. ___, ___ L.Ed. 2d ___, 102 S. Ct. 671 (1981), Nottelson v. Smith Steel Workers D.A.L.U. 19806, 643 F.2d 445 (7th Cir.), cert.denied,

___ U.S. ___, 70 L.Ed.2d 488, 102 S. Ct. 587 (1981), and Wondzell v. Alaska Wood Products, Inc., 601 P.2d 584 (Alaska 1979), appeal dismissed, 444 U.S. 1040 (1980). The two federal cases concern the application of Title VII of the Civil Rights Act of 1964,[1] and the requirement in that Act that reasonable accommodation be made of an employee's religious beliefs. Those cases also concern the issue of the constitutionality of the Act. The state case concerns the application of Title VII and of an Alaska statute. Since none of these cases concern the issue raised by petitioner they are not in conflict with the decision of the Supreme Court of Washington.

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1 Sections 701, et seq., 701(j), 703 as amended; 42 U.S.C.A. Sections 2000e, et seq., 2000e(j), 2000e-2.

2. The decision of the Washington Supreme Court is not in conflict with applicable decisions of this Court.

Petitioner also argues that this Court should accept jurisdiction on the ground that the decision of the Washington Court conflicts with decisions of this Court in Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S. 707 (1981), and United States v. Seeger, 380 U.S. 163 (1965). We submit, however, that neither of those cases is in conflict with the decision in question.

Thomas v. Review Bd., supra, concerned a member of a religious sect, the Jehovah's Witness, who had been denied unemployment compensation by the State of Indiana. Mr. Thomas had quit his job on the grounds that the work he

was required to do conflicted with his understanding of the requirements of the Jehovah's Witness teachings. Leon Grant's situation is different. Mr. Grant does not base his belief on the teachings of a religious body of which he is a member. His beliefs are personal.

United States v. Seeger, 380 U.S. 163 (1965) is not a case of constitutional principle. Rather, the case rests upon a construction of the statute which exempts conscientious objectors from the draft.[2]

Since neither of the decisions of this Court relied upon by petitioner are in conflict with the decision of the Supreme Court of Washington, it is

2 The 1940 Selective Training and Service Act, Sections 5(g), 54 Stat. 889.

respectfully submitted that this Court should not take jurisdiction of the petition on that ground.

3. This case does not present an important, unsettled, question of constitutional law.

The Washington statute under review by the Supreme Court of Washington, Revised Code of Washington, Section 41.56.122, was enacted by the Washington Legislature in 1973.[3] The statute authorizes union security provisions in collective bargaining agreements between certain public employers and their employees.[4]

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3 Section 2, chapter 59, 1973 Laws of Washington.

4 A union security clause requires every member of a bargaining unit to pay a representation fee to the union which represents the bargaining unit.

Union security provisions in the private sector have previously been upheld by this Court against First Amendment associational challenges. See, Railway Employees Department v. Hanson, 351 U.S. 225 (1955); and in International Association of Machinists v. Street, 367 U.S. 740 (1961). In 1977, this Court also upheld the validity of union security clauses in the public sector in Abood v. Detroit Bd. of Educ., et al., 431 U.S. 209 (1977). The essence of these opinions is that as long as actual membership in the union is not required of an employee, but only the payment of fees for services rendered by the union as collective bargaining agent for the employee, the First Amendment freedom of association is not violated.

It is true that the precise question presented by Mr. Grant's petition has not been directly answered by this Court. However, there is no compelling need to address it at this time. The State of Washington has a valid and neutral law of general applicability which has a narrowly drawn exemption covering members of a religious body which has tenets or teachings forbidding support of unions. This is the same type of exemption that Congress recently added to the National Labor Relations Act with respect to private sector union security provisions.[5] It is also the same type of exemption as this Court had before it earlier this year in

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5 29 U.S.C.A., Section 169, as amended in 1980.

United States v. Lee, 50 U.S.L.W. 4201 (U.S. Feb. 23,1982) (No. 80-767).[6]

The reason such legislation confines its exemption to members of a religious sect is readily apparent when the alternative is considered. Personal beliefs, though they may take on the character of religious beliefs, are nonetheless personal. They are subjective. But because of their subjectivity, the body responsible for determining whether the exemption applies must necessarily become

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6 The statute in that case, 26 U.S.C.A. Section 1402(g), exempts from the social security tax ". . .a member of a recognized religious sect or division thereof . . . [who is] an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance. . . ."

involved in an evaluation of the belief. Evaluation of personal belief, however, is not a task for government.

In order to preserve the general requirement that members of a bargaining unit pay their fair share of the cost of representation, it was reasonable for the legislature to adopt an objective criteria against which a claim for exemption could be measured. Membership in a sect which has tenets or teachings against support of unions, as opposed to purely personal beliefs, is a legitimate criteria. It is the least intrusive means of determining the persons entitled to the exemption, and it makes the scope of the exemption controllable. The exemption therefore violates neither the First nor the Fourteenth Amendments.

This Court has not previously extended the First Amendment to personal beliefs which find no support in the tenets or teachings of a religious body, and it is submitted there is no reason for it to do so in this case. The cases of constitutional principle relied upon by petitioner all concern a member or members of a religion. In Wisconsin v. Yoder, 406 U.S. 205 (1972), the issue concerned the exemption of the Amish sect from Wisconsin's mandatory school law. Sherbert v. Verner, 374 U.S. 398 (1963), concerned a member of the Seventh Day Adventist Church. Everson v. Bd. of Educ., 330 U.S. 1 (1947), concerned the Catholic religion. Walz v. Tax Commission of the City of New York, 397 U.S. 664 (1970), concerned

tax exemptions for religious organizations. United States v. Ballard, 322 U.S. 78 (1943), concerned the "I Am" sect. United States v. Lee, 50 U.S.L.W. 4201 (U.S. Feb. 23, 1982) (No. 80-767), concerned the Amish sect.

The interest of labor peace in the public sector is no less than the interest of labor peace in the private sector. Abood v. Detroit Bd. of Educ., supra, at page 224. It is a compelling state interest. The Washington Legislature has granted a limited exemption to the union security provisions of the Washington statute. Petitioner's attack on that exemption would not bring him within that exemption but rather would destroy the exemption. The decision of the Supreme

Court of Washington was correct.

CONCLUSION

It is respectfully submitted the petitioner has stated no grounds upon which this Court should exercise its discretion to review the decision of the Supreme Court of Washington in this case. Leon Grant's petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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